IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs April 13, 2005

MICHAEL LORD v. MEHARRY MEDICAL COLLEGE SCHOOL OF DENTISTRY

Appeal from the Chancery Court for Davidson County
No. 03-2839-II Carol L. McCoy, Chancellor

No. M2004-00264-COA-R3-CV - Filed August 12, 2005

A former dental student appeals trial court's dismissal of his claim against Meharry Medical College wherein the student asked the court to revise a failing grade and reinstate the student in school after he had been dismissed for poor academic performance. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

PATRICIA J. COTTRELL, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., J. and DONALD P. HARRIS, SR. J., joined.

Troy Lee Brooks, Mt. Juliet, Tennessee, for the appellant, Michael Lord.

Charles K. Grant, Lawrence C. Maxwell, Nashville, Tennessee, for the appellee, Meharry Medical College, School of Dentistry.

OPINION

Michael Lord filed suit against Meharry Medical College School of Dentistry ("Meharry") alleging negligence, breach of contract, a violation of the Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-101 *et seq*., misrepresentation, and a violation of 42 U.S.C. § 1983 arising from Mr. Lord's dismissal from Meharry's School of Dentistry. The trial court granted Meharry's motion to dismiss and Mr. Lord appealed.

I. ALLEGATIONS

For purposes of this appeal, the factual allegations in Mr. Lord's complaint are taken as true. On January 2, 2003, Mr. Lord received a letter from William D. Scales, Interim Associate Dean of Academic and Student Affairs notifying him that he was dismissed as a student from Meharry's School of Dentistry. The letter advised Mr. Lord that the Student Evaluation and Promotion Committee had decided to dismiss him based on poor academic performance during the 2002 fall

semester since he had failed Gross Anatomy and Microscopic Anatomy. The letter from Dr. Scales advised Mr. Lord that he could appeal the committee's decision to the Dean of the School of Dentistry.

The letter from Mr. Lord to the Dean appealing his dismissal is an exhibit to the complaint. In this appeal letter, Mr. Lord acknowledges that a "double failure in a course will result in my dismissal from the college" and complimented the staff of Meharry at length for their support, assistance and encouragement during the previous semester. Mr. Lord was apparently repeating his freshman year at Meharry due to failing his coursework previously. In his complaint he alleges that his Microscopic Anatomy grade was later changed to a "C", leaving Gross Anatomy as his failing grade. Apparently, Mr. Lord had failed Gross Anatomy in an earlier semester. Failure of the same course twice is grounds to dismiss a student at Meharry for poor academic performance. Basically, Mr. Lord asked to be reinstated because he failed Gross Anatomy by only 3 points and believed he could be successful. By letter dated January 16, 2003, the Dean sustained his dismissal "based on your failure of the same course twice." The Dean's letter advised he could appeal further to the President of Meharry. Mr. Lord alleges he appealed to the President, and that appeal was denied.[1]

Mr. Lord does not deny that he failed the course twice, and he does not deny that failure of the course twice is grounds for Meharry to dismiss him for poor academic performance. Mr. Lord alleges, however, that Meharry's failure to comply with its representations and agreements prevents Meharry from dismissing him as a student.

Mr. Lord alleges that he relied upon and had been subject to Meharry's Academic Polices and Procedures ("Policies") that are intended to comply with the standards of the Commission on Dental Accreditation of the American Dental Association ("ADA Standards"), as well as the Student Affair Handbook ("Handbook"). According to Mr. Lord, these three documents contain representations and agreements by Meharry which the school violated. Specifically, Mr. Lord alleges:

1. Meharry violated its Policies because Mr. Lord was not provided "structured remediation and technique practice sessions";

2. Meharry violated its Policies because Mr. Lord was not provided the opportunity to have his grades recalculated (*i.e.* records corrected) and effect an appeal;

3. Meharry violated its Handbook because Mr. Lord was not provided the promised supportive assistance for the grade appeal;

[1] Mr. Lord's complaint states that the letter of appeal to the President and his response are attached as exhibits, but they were apparently inadvertently omitted. These documents are not a subject of dispute between the parties.

4. Meharry violated its Handbook because the committee that dismissed Mr. Lord did not include a student as promised in the Handbook;

5. Meharry violated its Policies because the syllabi for the courses were not written adequately as promised by the Policies; and

6. Meharry was negligent in its administration of the School of Dentistry.

As relief, Mr. Lord asks the court to refigure his failing grade in Gross Anatomy to a passing grade, to reinstate him as a student at Meharry, and award to him money damages.

The trial court granted Meharry's motion to dismiss for failure to state a claim upon which relief can be granted and made the following findings:

> [T]he Plaintiff is seeking to have the Court review the academic policies of the Defendant, and the application of those policies as they pertain to the academic performance of the Plaintiff. However, it is almost universally recognized that this is something that courts are not prepared or equipped to do. *Regents of University of Michigan v. Ewing*, 474 U.S. 214, 226 (1985) (declaring that federal courts are unsuited to evaluate the substance of the multitude of academic decisions that are made daily by faculty members of educational institutions; "University faculties must have the widest range of discretion in making judgments as to the academic performance of students and their entitlement to promotion or graduation."). For over 25 years, it has been the law in this Court that it will not substitute its judgment for that of the university faculty on such matters as degree requirements and academic dismissals of students. *Lowenthal v. Vanderbilt University* , No. A-8525 (decided August 15, 1977). In *Ross v. Creighton University*, 957 F.2d 410, 416 (7th Cir. 1992), the court found that most courts agree with this principle, stating: "Courts are not qualified to pass an opinion as to the attainments of a student . . . and . . . courts will not review a decision of the school authorities relating to academic qualifications of the students." This principle was reaffirmed as recently as a year ago by the U.S. Court of Appeals in *Hutchings v. Vanderbilt University*, 55 Fed. Appx. 308 (6th Cir. 2003) (Courts are not inclined to review educational malpractice claims or breach of contract claims based on inadequate educational services.)
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> In addition, this Court finds that: (1) the Plaintiff fails to state a claim under the Consumer Protection Act because the Defendant is not engaging in trade or commerce; (2) the Plaintiff fails to state a claim for breach of contract, because he cannot rely on the Defendant's policies and procedures as forming the contract, and he has not adequately alleged what the terms of the agreement are, which of those terms bound the Defendant, and what facts show the agreement was breached; (3) the Plaintiff fails to state a claim for fraud and misrepresentation, because he has not plead with the required particularity and was not engaged in a business transaction;

and (4) the Plaintiff fails to state a claim under 42 U.S.C. § 1983, because the Defendant was not a "state actor."

II. STANDARD OF REVIEW

A Tennessee Rule of Civil Procedure 12.02(6) motion to dismiss for failure to state a claim tests the legal sufficiency of the complaint itself. *Willis v. Dept. of Corrections*, 113 S.W.3d 706, 710 (Tenn. 2003); *Doe v. Sundquist*, 2 S.W.3d 919, 922 (Tenn. 1999). The standard of appellate review of a dismissal under Rule 12.02(6) requires that we take the factual allegations in the complaint as true and review the trial court's legal conclusions *de novo* without giving any presumption of correctness to those conclusions. *Willis*, 113 S.W.3d at 710. The trial court should grant a motion to dismiss only "when it appears that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief." *Id*.

III. ANALYSIS

We agree with the trial court that the gravamen of Mr. Lord's complaint is a challenge to the substance of Meharry's academic decisions.[2] Mr. Lord basically is asking this court to overrule Meharry's decision on his academic performance, to order Meharry to revise the failing grade, and to order his reinstatement as a student. All damage he alleges he suffered stem from his dismissal as a student, which was the result of his failure of the of the same course twice.

As a general rule, courts have been reluctant and have declined to review academic decisions regarding student performance. *See Regents of University of Michigan v. Ewing*, 474 U.S. 214, 226, 106 S. Ct. 507 (1985) (stating there is a "narrow avenue for judicial review" of academic decisions). The issue of judicial review of academic decisions arose when our Supreme Court in *Horne v. Cox*, 551 S.W.2d 690 (Tenn. 1977), refused to review a grade appeal requested by a University of Memphis law student. While *Horne* predominantly dealt with an interpretation of the Administrative Procedures Act,[3] the Court drew a distinction between judicial review of student disciplinary matters and decisions about academic performance. *Id*. at 692. Our Supreme Court expressly adopted the following reasoning of the Fifth Circuit Court of Appeals:

> [W]e know of no case which holds that colleges and universities are subject to the supervision or review of the courts in the uniform application of their academic standards.

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[2]The complaint refers to ways in which Meharry allegedly negligently administered the dental program. While cast in slightly different terms, these allegations are made to allege a cause of action allowing this court to review Mr. Lord's grades and Meharry's decision to dismiss him. Even if these allegations could be somehow construed to allege a type of "educational malpractice," such a cause of action has not met with acceptance. *See* 1 ALR4th 1139, TORT LIABILITY OF PUBLIC SCHOOLS AND INSTITUTIONS OF HIGHER LEARNING FOR EDUCATIONAL MALPRACTICE.

[3]Tenn. Code Ann. § 4-5-101 *et seq*.

Id. (quoting *Mahavongsanan v. Hall*, 529 F.2d 448, 449-450 (5th Cir. 1976)).

In *Doherty v. Southern College of Optometry*, 862 F.2d 570 (6th Cir. 1988) *cert. denied*, 493 U.S. 810, 110 S. Ct. 53, 107 L. Ed.2d 22 (1989), the Sixth Circuit Court of Appeals heard an appeal by a former student of the Southern College of Optometry challenging the school's decision to deny him a degree because of the student's inability to meet clinical proficiency requirements. Part of the student's claims arose under state law requiring the Sixth Circuit to examine Tennessee law regarding judicial intervention in the academic context. *Id*. at 576. The court stated:

> Before we examine plaintiff's contractual theories under state law, we note that this case arises in an academic context where judicial intervention in any form should be undertaken only with the greatest reluctance. *See*, *e.g.*, *Regents of Univ. of Michigan v. Ewing*, 474 U.S. 214, 226, 106 S. Ct. 507, 514, 88 L. Ed.2d 523 (1985) (declaring federal courts unsuited "to evaluate the substance of the multitude of academic decisions that are made daily by faculty members of public educational institutions"). The federal judiciary is ill equipped to evaluate the proper emphasis and content of a school's curriculum. *Board of Curators of Univ. of Missouri v. Horowitz*, 435 U.S. 78, 89-91, 98 S. Ct. 948, 954-56, 55 L. Ed.2d 124 (1978).
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> This is the case especially regarding degree requirements in the health care field when the conferral of a degree places the school's imprimatur upon the student as qualified to pursue his chosen profession. (citations omitted) . . . Although the relationship may be analyzed as a contractual one, courts have adopted different standards of review when educators' decisions are based upon disciplinary versus academic criteria–applying a more intrusive analysis of the former and a far more deferential examination of the latter. *See*, *e.g.*, *Mahavongsanan*, 529 F.2d at 449-50. The Tennessee Supreme Court has endorsed this deferential standard of review for decisions by universities based upon academic criteria. *See Horne v. Cox*, 551 S.W.2d 690, 692 (Tenn. 1977) ("'[w]e know of no case which holds that colleges and universities are subject to the supervision or review of the courts in the uniform application of their academic standards'" (quoting *Mahavongsanan*, 529 F.2d at 449-50)).

Id. at 576-77. As in *Doherty*, this case likewise invites the court to substitute its judgment for educators in a health care field.[4]

In *DeArk v. Belmont College*, 1988 WL 136671 (Tenn. Ct. App. 1988) (No Tenn. R. App. P. 11 application filed), this court held that Belmont College was free to revise its grading policy and

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[4]The court in *Doherty* went on to discuss the standard it believed the Tennessee Supreme Court would apply in an academic setting where the issue is implied contract. *Id*. at 577. Since Mr. Lord does not allege an implied contract, it is not relevant to this case. Even if an implied contract claim could somehow be construed from Mr. Lord's complaint, we do not believe the facts alleged would support such a claim.

apply the revised policy to existing students. *Id*. at 1. Nursing students had challenged implementation by Belmont College of a stricter grading policy and contended that the policy in effect when they entered school applied to them because that policy became a part of the contract between them and Belmont. *Id*. Judge Cantrell, writing for the court, found that decisions about academic standards are "due great respect from this court." *Id*. at 2.

> When judges are asked to review the substance of a genuinely academic decision . . . they should show great respect for the faculty's professional judgment.

Id. (quoting *Regents of University of Michigan v. Ewing*, 474 U.S. 214, 225, 106 S. Ct. 507, 513, 88 L. Ed.2d 523, 532 (1985).

It is clear that Mr. Lord's complaint seeks to have the court review Meharry's decision to dismiss him for academic reasons, which entails review of the grade he was given in Gross Anatomy. It is likewise clear that Tennessee courts are restrained in their review of academic decisions. The complaint simply states no basis upon which the courts could decide Mr. Lord was entitled to a better (and passing) grade. It alleges no legal ground to justify undertaking a review of the grade. Based upon this reasoning alone, we believe the trial court's dismissal of Mr. Lord's complaint should be affirmed. However, we also believe dismissal is appropriate on at least two other alternative grounds.

First, the Policies, the ADA Standards, and the Handbook do not contain binding representations or agreements by Meharry. With regard to the Policies, they expressly provide that they do not constitute a binding obligation by Meharry. Mr. Lord attached the Policies to his complaint, and they provide as follows:

> [T]his manual does not constitute a contract, expressed or implied, between any applicant, student, or faculty member of Meharry Medical College, School of Dentistry.

Additionally, in the "Introduction" to the Policies, it is clearly provided that the Policies are subject to revision by Meharry. The ADA Standards Mr. Lord attached to his complaint state that their purpose is to provide standards whereby dental schools may be evaluated for accreditation and to serve as a program development guide. They do not purport to be a representation or agreement by Meharry. Finally, the Student Affairs Handbook describes generally the philosophy of the dental school, the student affair services offered, and the role of the student affairs office. It does not purport to make agreements or representations. Taken together, the Policies, ADA Standards, and Handbook do not constitute actionable representations by Meharry or contracts between Meharry and Mr. Lord.

Second, looking at the specific allegations regarding Meharry's alleged failure to comply with its obligations to Mr. Lord, even if there were agreements or representations, Mr. Lord has not alleged Meharry failed to meet these purported obligations. Mr. Lord alleges that he was not provided assistance in his course work, yet he does not allege assistance was requested, and he is quite specific in his appeal to the Dean that he was given significant support and assistance. With regard to

Meharry's failure to give Mr. Lord a chance to have his grades recalculated, he does not allege that he requested any recalculation.[5] Mr. Lord alleges the Handbook required that a student be included when the committee decided to dismiss him from Meharry. The Handbook language, however, states that students will participate "on appropriate committees." This does not obligate Meharry to have a student on this particular committee. Finally, Mr. Lord alleges the course syllabus was not written appropriately. This simply does not arise to the level of an actionable allegation.

The trial court's dismissal is affirmed as to all claims. Costs of this appeal are assessed against the appellant, Michael Lord.

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PATRICIA J. COTTRELL, JUDGE

[5] Interestingly, Mr. Lord does allege that his failing grade in Microscopic Anatomy was changed to a "C", so apparently Mr. Lord was successful in having at least one grade changed. It is also important to note that at no point does Mr. Lord allege that the failing grade he received in Gross Anatomy was in error.